

By: Maureen L. Forsyth  
Maureen L. Forsyth  
Executive Officer

1 XAVIER BECERRA  
Attorney General of California  
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6 Telephone: (559) 477-1626  
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7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **PHYSICIAN ASSISTANT BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation  
12 Against:

13 **KELLIE MICHELE MARLOW, P.A.**  
14 **386 Marble Island Rd.**  
**Colchester, VT 05446**

15 **Physician Assistant License No. PA 16520**

16 Respondent.

Case No. 950-2015-000543

OAH No. 2017020822

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Maureen Lynn Forsyth (Complainant) is the Executive Officer of the Physician  
22 Assistant Board (Board). She brought this action solely in her official capacity and is represented  
23 in this matter by Xavier Becerra, Attorney General of the State of California, by Steve Diehl,  
24 Deputy Attorney General.

25 2. Kellie Michele Marlow, P.A. (Respondent) is representing herself in this proceeding  
26 and has chosen not to exercise her right to be represented by counsel.  
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3. On or about September 24, 2002, the Board issued Physician Assistant License No. 16520 to Kellie Michele Marlow, P.A. (Respondent). The Physician Assistant License expired on April 30, 2014, and has not been renewed.

## JURISDICTION

4. First Amended Accusation No. 950-2015-000543 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on June 29, 2017. A copy of First Amended Accusation No. 950-2015-000543 is attached as Exhibit A and incorporated by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in First Amended Accusation No. 950-2015-000543. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in First Amended Accusation No. 950-2015-000543, agrees that cause exists for discipline and hereby surrenders her Physician Assistant License No. 16520 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Physician Assistant License without further process.

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1 4. If Respondent ever files an application for licensure or a petition for reinstatement in  
2 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must  
3 comply with all the laws, regulations and procedures for reinstatement of a revoked license in  
4 effect at the time the petition is filed, and all of the charges and allegations contained in First  
5 Amended Accusation No. 950-2015-000543 shall be deemed to be true, correct and admitted by  
6 Respondent when the Board determines whether to grant or deny the petition.

7 5. Respondent shall pay the agency its costs of investigation and enforcement in the  
8 amount of \$10,012.00 prior to issuance of a new or reinstated license.

9 6. If Respondent should ever apply or reapply for a new license or certification, or  
10 petition for reinstatement of a license, by any other health care licensing agency in the State of  
11 California, all of the charges and allegations contained in First Amended Accusation, No. 950-  
12 2015-000543 shall be deemed to be true, correct, and admitted by Respondent for the purpose of  
13 any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

14  
15 ACCEPTANCE

16 I have carefully read the Stipulated Surrender of License and Order. I understand the  
17 stipulation and the effect it will have on my Physician Assistant License. I enter into this  
18 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to  
19 be bound by the Decision and Order of the Physician Assistant Board.

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21 DATED: 7-6-17

  
KELLIE MICHELE MARLOW, P.A.  
Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
for consideration by the Physician Assistant Board of the Department of Consumer Affairs.

Dated: 7/7/17

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
MATTHEW M. DAVIS  
Supervising Deputy Attorney General

  
STEVE DIEHL  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**First Amended Accusation No. 950-2015-000543**

1 XAVIER BECERRA  
Attorney General of California  
2 MATTHEW M. DAVIS  
Supervising Deputy Attorney General  
3 STEVE DIEHL  
Deputy Attorney General  
4 State Bar No. 235250  
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11 In the Matter of the First Amended Accusation  
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Case No. 950-2015-000543

12 **KELLIE MICHELE MARLOW, P.A.**  
13 **386 Marble Island Rd.**  
14 **Colchester, VT 05446**

**FIRST AMENDED ACCUSATION**

15 **Physician Assistant License No. 16520**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Maureen Lynn Forsyth (Complainant) brings this First Amended Accusation solely in  
21 her official capacity as the Executive Officer of the Physician Assistant Board, Department of  
22 Consumer Affairs.

23 2. On or about September 24, 2002, the Physician Assistant Board issued Physician  
24 Assistant License Number 16520 to Kellie Michele Marlow, P.A. (Respondent). The Physician  
25 Assistant License expired on April 30, 2014, and has not been renewed.

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JURISDICTION

3. This First Amended Accusation is brought before the Physician Assistant Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 820 of the Code states:

“Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate’s ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.”

5. Section 821 of the Code provides that the licentiate's failure to comply with an order issued under section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate of license.

6. Section 2234 of the Code provides that the Board shall take action against any licensee who is charged with unprofessional conduct.

7. Section 2305 of the Code states:

“The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.”

8. Section 3527 of the Code states:

“(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional

1 conduct which includes, but is not limited to, a violation of this chapter, a violation of the  
2 Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board  
3 of California.

4 “(b) The board may order the denial of an application for, or the suspension or revocation  
5 of, or the imposition of probationary conditions upon, an approved program after a hearing as  
6 required in Section 3528 for a violation of this chapter or the regulations adopted pursuant  
7 thereto.

8 “(c) The Medical Board of California may order the denial of an application for, or the  
9 issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition  
10 of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as  
11 required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a  
12 violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations  
13 adopted by the board or the Medical Board of California.

14 “(d) Notwithstanding subdivision (c), the Division of Medical Quality of the Medical  
15 Board of California, in conjunction with an action it has commenced against a physician and  
16 surgeon, may, in its own discretion and without the concurrence of the Medical Board of  
17 California, order the suspension or revocation of, or the imposition of probationary conditions  
18 upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528,  
19 for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a  
20 violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the  
21 Medical Board of California.

22 “(e) The board may order the denial of an application for, or the suspension or revocation  
23 of, or the imposition of probationary conditions upon, a physician assistant license, after a hearing  
24 as required in Section 3528 for unprofessional conduct which includes, except for good cause, the  
25 knowing failure of a licensee to protect patients by failing to follow infection control guidelines of  
26 the board, thereby risking transmission of blood-borne infectious diseases from licensee to  
27 patient, from patient to patient, and from patient to licensee. In administering this subdivision,  
28 the board shall consider referencing the standards, regulations, and guidelines of the State

1 Department of Health developed pursuant to Section 1250.11 of the Health and Safety Code and  
2 the standards, regulations, and guidelines pursuant to the California Occupational Safety and  
3 Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for  
4 preventing the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health care  
5 settings. As necessary, the committee shall consult with the Medical Board of California, the  
6 Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing,  
7 and the Board of Vocational Nurse and Psychiatric Technicians, to encourage appropriate  
8 consistency in the implementation of this subdivision.

9 "The board shall seek to ensure that licensees are informed of the responsibility of licensees  
10 and others to follow infection control guidelines, and of the most recent scientifically recognized  
11 safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

12 "(f) The board may order the licensee to pay the costs of monitoring the probationary  
13 conditions imposed on the license.

14 "(g) The expiration, cancellation, forfeiture, or suspension of a physician assistant license  
15 by operation of law or by order or decision of the board or a court of law, the placement of a  
16 license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive  
17 the board of jurisdiction to commence or proceed with any investigation of, or action or  
18 disciplinary proceeding against, the licensee or to render a decision suspending or revoking the  
19 license."

20 9. Section 125.3 of the Code states:

21 "(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary  
22 proceeding before any board within the department or before the Osteopathic Medical Board,  
23 upon request of the entity bringing the proceedings, the administrative law judge may direct a  
24 licentiate found to have committed a violation or violations of the licensing act to pay a sum not  
25 to exceed the reasonable costs of the investigation and enforcement of the case.

26 "(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order  
27 may be made against the licensed corporate entity or licensed partnership.

1       “(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs  
2 are not available, signed by the entity bringing the proceeding or its designated representative  
3 shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.  
4 The costs shall include the amount of investigative and enforcement costs up to the date of the  
5 hearing, including, but not limited to, charges imposed by the Attorney General.

6       “(d) The administrative law judge shall make a proposed finding of the amount of  
7 reasonable costs of investigation and prosecution of the case when requested pursuant to  
8 subdivision (a). The finding of the administrative law judge with regard to costs shall not be  
9 reviewable by the board to increase the cost award. The board may reduce or eliminate the cost  
10 award, or remand to the administrative law judge if the proposed decision fails to make a finding  
11 on costs requested pursuant to subdivision (a).

12       “(e) If an order for recovery of costs is made and timely payment is not made as directed in  
13 the board's decision, the board may enforce the order for repayment in any appropriate court. This  
14 right of enforcement shall be in addition to any other rights the board may have as to any  
15 licentiate to pay costs.

16       “(f) In any action for recovery of costs, proof of the board's decision shall be conclusive  
17 proof of the validity of the order of payment and the terms for payment.

18       “(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the  
19 license of any licentiate who has failed to pay all of the costs ordered under this section.

20       (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or  
21 reinstate for a maximum of one year the license of any licentiate who demonstrates financial  
22 hardship and who enters into a formal agreement with the board to reimburse the board within  
23 that one-year period for the unpaid costs.

24       “(h) All costs recovered under this section shall be considered a reimbursement for costs  
25 incurred and shall be deposited in the fund of the board recovering the costs to be available upon  
26 appropriation by the Legislature.

27       “(i) Nothing in this section shall preclude a board from including the recovery of the costs  
28 of investigation and enforcement of a case in any stipulated settlement.

“(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

“(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.”

**FIRST CAUSE FOR DISCIPLINE**

(Failure to Comply with an Order Pursuant to Section 820)

10. Respondent is subject to disciplinary action under section 821 in that she failed to comply with an order for examination issued under section 820. The circumstances are as follows:

11. On or about April 7, 2016, the Board issued an Order Compelling Mental/Physical Examination of Licensee concerning the Respondent (Order). Pursuant to the Order Respondent was required to submit to an examination by a psychiatrist or psychologist no later than thirty (30) days after the service of the Order.

12. On or about May 9, 2016, the Order was served on Respondent by a Health Quality Investigation Unit (HQUI) investigator via Certified Mail at her address of record, 386 Marble Island Road, Colchester, Vermont, 05446. Courtesy copies were also sent to two additional addresses in Vermont that were believed to belong to Respondent.

13. On or about May 13, 2016, Respondent left a telephone message with the HQIU investigator asking that he return her call.

14. On or about May 23, 2016, Respondent spoke to the HQUIU investigator by telephone. She acknowledged receipt of the Order and told the investigator that compliance with the Order would be difficult for her, in light of the need to travel to California from Vermont. Respondent stated that she would discuss her situation with her Vermont attorney on May 24, 2016.

15. On or about May 27, 2016, the letter addressed to Respondent's address of record was returned by the Post Office marked "not deliverable as addressed and unable to forward."

16. On or about June 14, 2016, the HQIU investigator spoke by telephone with a Vermont attorney who stated that he represents Respondent. Immediately following the telephone call, the investigator received a letter, attached to an email, from the Vermont attorney confirming his representation of Respondent, and requesting an additional 30 days to respond to the Board's Order.

17. On or about July 7, 2016, the HQIU investigator replied to the Vermont attorney, by email, that the request for an additional 30 days was denied.

18. Respondent failed to comply with the Order in that she was required to submit to an examination by a psychiatrist or psychologist within thirty (30) days after the service of the Order and has failed to do so at any time.

## SECOND CAUSE FOR DISCIPLINE

(Out of State Discipline)

19. Respondent is subject to disciplinary action under section 2305, in that her license to practice as a physician assistant in the State of Vermont was suspended, and she was reprimanded, based on circumstances that would constitute grounds for discipline in California. The circumstances are as follows:

20. Between August 21, 2014, and January 1, 2015, Respondent wrote nineteen prescriptions for Tramadol 50 mg, a Schedule IV controlled substance, in another person's name for her own use. Respondent filled all nineteen Tramadol prescriptions, thereby obtaining a total of 1854 tablets. In January, 2015, Respondent attempted to self-prescribe a prescription for Lunesta, a Schedule IV controlled substance. Respondent called in the Lunesta prescription for herself while representing that she was another provider.

21. On or about March 1, 2017, the Vermont Board of Medical Practice issued an Order, finding that Respondent's above-described actions constituted unprofessional conduct, in violation of Vermont Statute Title 26, Section 1354, subdivisions (a)(7) and (a)(37). The Vermont Board issued a reprimand of Respondent personally, suspended Respondent's medical

1 license for three months, and placed other various terms and restrictions on Respondent's ability  
2 to practice medicine in Vermont. Unprofessional conduct is grounds for discipline in California  
3 pursuant to section 2234 of the Code.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
6 and that following the hearing, the Physician Assistant Board issue a decision:

7 1. Revoking or suspending Physician Assistant License Number 16520, issued to  
8 Respondent Kellie Michele Marlow, P.A.

9 2. Ordering Respondent Kellie Michele Marlow, P.A. to pay the Physician Assistant  
10 Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business  
11 and Professions Code section 125.3, and, if placed on probation, the cost of probation;

12 3. Taking such other and further action as deemed necessary and proper.  
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16 DATED: June 29, 2017

  
MAUREEN LYNN FORSYTH  
Executive Officer  
Physician Assistant Board  
Department of Consumer Affairs  
State of California  
Complainant

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